

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JEREMY BALES CREATIVE LLC

Plaintiff,

-against-

ASCENA RETAIL GROUP, INC.

Defendant.

ECF Case

Civil Action No. 20 Civ. 7368

COMPLAINT

Plaintiff, Jeremy Bales Creative LLC, by its undersigned counsel, Mavronicolas Law Group PLLC, for its complaint against defendant, Ascena Retail Group, Inc. (“Defendant”) alleges as follows:

JURISDICTION AND VENUE

1. This claim arises under the provisions of the Copyright Act of the United States, as amended, 17 U.S.C. § 1 *et seq.*, and is for infringement of a copyright application before the Copyright Office of the United States.
2. This Court has subject matter jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 1338(a).
3. This Court has personal jurisdiction over the Defendant because Defendant’s headquarters is in the State of New Jersey and because substantial parts of the events or omissions giving rise to the claims herein occurred within this District.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c) and 28 U.S.C. § 1400 because the Defendant may be found in the district and, upon information

and belief, has committed acts of infringement in the district.

PARTIES

5. Plaintiff is a well-known photographer residing at 2239 Crescent St, Apt. 1, Astoria NY 11105. Plaintiff is a professional photographer and in the business of licensing rights in his images to users for a fee.
6. Upon information and belief, Defendant is a Delaware corporation, with a principal place of business at 933 MacArthur Blvd, Mahwah, NJ 07430.
7. Upon information and belief, Defendant is the largest specialty retailer for women and girls in the United States.
8. Defendant maintains a website for these purposes located at www.ascenaretail.com.

RELEVANT FACTS

9. Plaintiff is the owner of the copyrights identified in Exhibit A hereto (the "Image"). Plaintiff is the owner of valid copyright registration to the Image; such registration number and image infringement details are listed in Exhibit A.
10. Plaintiff has a copyright registration with an effective date of registration of May 24, 2017. A copy of the registration certificates is attached hereto as Exhibit B.
11. On September 13, 2015, Plaintiff licensed the Image to Worth Magazine and retained ownership of copyright in the Image. Worth Magazine published the Image on its website in accordance with its license. A copy of the Image on Worth Magazine's website can be found at the URL <https://www.worth.com/contributor/worth-giving-roslyn-jaffe/>
12. Defendant infringed Plaintiff's copyright in the Image by reproducing and

publicly displaying the Image on its website for advertising purposes without obtaining or paying for the necessary license.

13. Defendant reproduced and displayed the Image on its website at <https://www.ascenaretail.com/author/daniellecorreia/page/3/>. A copy of the infringing use is annexed hereto as Exhibit C.

14. Defendant was not, and has never been, licensed or otherwise authorized to reproduce, display, distribute or use the Image.

15. Upon information and belief, Defendant's website is located on the Internet and accessible throughout the world, including the State of New Jersey.

16. Prior to instituting the present action, Plaintiff notified Defendant that the unauthorized use of the Image violate Plaintiffs exclusive rights as copyright owner pursuant to 17 U.S.C § 106, and gave Defendant an opportunity to enter into a retroactive licensing agreement or otherwise make payment for Defendant's past unauthorized use.

17. Despite Plaintiffs repeated requests for payment, Defendant refused to properly rectify its infringing conduct.

FIRST CAUSE OF ACTION – COPYRIGHT INFRINGEMENT

18. Plaintiff incorporates paragraphs 1-17 above, as though fully set forth herein.

19. Plaintiff holds valid and exclusive registered copyright to the Image that is the subject of this action.

20. Defendant reproduced, distributed and displayed the image without Plaintiffs authorization.

21. Unauthorized use of the Image violates Plaintiffs exclusive rights as copyright

owner pursuant to 17 U.S.C § 106.

22. Defendant conduct constitutes copyright infringement under the Copyright Act of 1976, 17 U.S.C §501.

23. As a result of the copyright infringement described above, Plaintiff is entitled to relief, including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorneys fees and pre-judgment and post-judgment interest for each of the works infringed by Defendant.

WHEREFORE, Plaintiff prays that this Court grant it relief as follows;

A. Preliminarily and permanently enjoin Defendant, its officers, directors, principals, agents, servants, employees, successors and assigns from:

- i. copying, or making any unauthorized use of the Image in any form, including but not limited to print or electronic.
- ii. manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any promotional material bearing any simulation, reproduction, counterfeit, or copy of the Image.
- iii. using any simulation, reproduction, counterfeit, or copy of the Image, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any product or service of Defendant.

B. Direct Defendant to deliver for destruction all products, magazines, signs, prints, packages, wrappers, receptacles, digital files and advertisements in its possession or under their control, bearing the Image, or any simulation, reproduction,

counterfeit, or copy, and all plates, molds, matrices and other means of making the same.

- C. Direct Defendant to account for and relinquish to Plaintiff all gains, profits, and advantages derived by Defendant through Defendant infringement of Plaintiff's copyrights.
- D. Direct Defendant to pay to Plaintiff actual damages or, its statutory damages as set forth in 17 U.S.C. §504 if Plaintiff so elects at any time before final judgement is rendered.
- E. Award Plaintiff the costs of this action together with reasonable attorney's fees in accordance with 17 U.S.C. §505;
- F. Award Plaintiff pre-judgment and post-judgment interest on the amount of the award Plaintiff, and;
- G. Award Plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff Jeremy Bales Creative, LLC hereby demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38 and other applicable law.

Dated: New York, NY
June 17, 2020

Respectfully Submitted,

MAVRONICOLAS LAW GROUP PLLC

/s/ Peter Dee
Peter C. Dee
Gregori D. Mavronicolas
Nicholas Ranallo (Of Counsel)(PHV Application
Forthcoming)

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New York, New York 10017
Telephone: 646.770.0024
Facsimile: 866.774.9005

Exhibit A

WORK AND INFRINGING USE

Copyrighted Works.

No.	TITLE	COPYRIGHT REGISTRATION
2.	Group Registration Photo, Roslyn Jaffe Portraits for Worth, published 3/16/2017	VA 2-090-385

Infringing Uses.

Work Infringed: Bales_20150904_1701

Number of Known Infringing Uses: 1


Page URL(s): <https://www.ascenaretail.com/author/daniellecorreia/page/3/>

Image URL(s): https://www.worth.com/worth-giving-roslyn-jaffe/#new_tab

Exhibit B

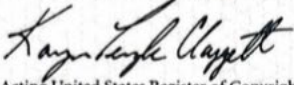
COPY OF COPYRIGHT REGISTRATION CERTIFICATE

Certificate of Registration

 This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Registration Number
VA 2-090-385

Effective Date of Registration:
May 24, 2017


Acting United States Register of Copyrights and Director

Title _____

Title of Work: Group Registration Photo, Roslyn Jaffe portraits for Worth, published 3/16/2017; 2 photos

Completion/Publication _____

Year of Completion: 2017
Date of 1st Publication: March 16, 2017
Nation of 1st Publication: United States

Author _____

• **Author:** Jeremy Bales Creative, LLC
Author Created: photograph
Work made for hire: Yes
Citizen of: United States

Copyright Claimant _____

Copyright Claimant: Jeremy Bales Creative, LLC
PO Box 20078, Greeley Square Station, New York, NY, 10001

Rights and Permissions _____

Organization Name: Jeremy Bales Creative, LLC
Address: PO Box 20078
Greeley Square Station
New York, NY 10001 United States

Certification _____

Name: Jeremy Bales
Date: May 24, 2017

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Exhibit C

A COPY OF THE ASCENA WEBSITE SHOWING IMAGE

